

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JOHN PAUL THOMAS,

Petitioner,

v.

No. CV 09-0174 RB/LAM

JAMES JANECKA, WARDEN,

Respondent.

**ORDER ADOPTING MAGISTRATE JUDGE'S PROPOSED FINDINGS
AND RECOMMENDED DISPOSITION (Doc. 23)**

THIS MATTER is before the Court on the Magistrate Judge's *Proposed Findings and Recommended Disposition* (Doc. 24) (hereinafter "**PF&RD**"), filed on October 20, 2009. No party has filed objections to the proposed findings and recommended disposition and the deadline for filing objections has passed.¹ The Court has determined that it will adopt the **PF&RD**, grant *Respondent[']s Notice Re: Status of Sate [sic] Court Proceedings and Motion to Dismiss Petition Without Prejudice for Failure to Exhaust All Available State Court Remedies* (Doc. 23), deny without prejudice *Petitioner's Demand for Release From Imprisonment* (Doc. 18), deny as moot *Petitioner's Request for Determination of Finality of State Remedies* (Doc. 22), deny the

¹On November 4, 2009, Respondents filed *Respondents' Notice Re: Status of State Court Proceedings* (Doc. 25), in which they state that on October 29, 2009, the state district court issued an order denying Petitioner's state habeas petition. See Document 25-2 at 18. This document does not affect the Magistrate Judge's findings and recommendations because, as stated in the **PF&RD**, in order for Petitioner to exhaust his state court remedies the issue must be presented to the highest state court and, therefore, Petitioner must timely seek certiorari review with the New Mexico Supreme Court. See **PF&RD** (Doc. 24) at 7 (citing *Dever v. Kan. State Penitentiary*, 36 F.3d 1531, 1534 (10th Cir. 1994) (holding that the exhaustion requirement is satisfied if the federal issue was properly presented to the highest state court) and *Watson v. State of New Mexico*, 45 F.3d 385, 387 (10th Cir. 1995) (holding that a state prisoner does not fully exhaust state remedies without timely seeking certiorari review with the state supreme court)).

remaining claim for restoration of good time credits for failure to exhaust available state court remedies, and dismiss this case without prejudice.

IT IS THEREFORE ORDERED that:

1. The Magistrate Judge's *Proposed Findings and Recommended Disposition* (Doc. 24) are **ADOPTED** by the Court;

2. *Respondent[s] Notice Re: Status of Sate [sic] Court Proceedings and Motion to Dismiss Petition Without Prejudice for Failure to Exhaust All Available State Court Remedies* (Doc. 23) is **GRANTED**;

3. *Petitioner's Demand for Release From Imprisonment* (Doc. 18) is **DENIED** without prejudice;

4. *Petitioner's Request for Determination of Finality of State Remedies* (Doc. 22) is **DENIED** as moot;

5. The remaining claim for restoration of good time credits raised in Petitioner's *Petition for Writ of Habeas Corpus* (Doc. 1) and *(Proposed) Amended Petition* (Doc. 16) is **DENIED** for failure to exhaust available state court remedies; and

6. This case be **DISMISSED WITHOUT PREJUDICE** in a final judgment entered concurrently with this order.

IT IS SO ORDERED.



HONORABLE ROBERT C. BRACK
UNITED STATES DISTRICT JUDGE